IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION

WENDELL A LEE, Plaintiff, v. DIRECTOR, TDCJ-CID, Defendant.	§ § § § § § § § § §	CIVIL ACTION NO. 5:16-CV-00067-RWS

MEMORANDUM ORDER ADOPTING THE REPORT OF THE UNITED STATES MAGISTRATE JUDGE

Petitioner Wendell A. Lee, an inmate formerly confined at the Telford Unit, proceeding *pro se*, brought this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. The Court referred this matter to the Honorable Caroline M. Craven, United States Magistrate Judge. In her Report and Recommendation, the Magistrate Judge recommends this petition for writ of habeas corpus be dismissed without prejudice for want of prosecution. Docket No. 13. No objections were filed. Because Plaintiff did not file objections to the Report and Recommendation, this Court reviews the Magistrate Judge's findings of fact and conclusions of law for clear error. *Rodriguez v. Bowen*, 857 F.2d 275, 276–277 (5th Cir. 1988).

Having considered the record and Report, the Court agrees with the Magistrate Judge that the Petition should be dismissed because Petitioner has not complied with the Court's January 23, 2017 Order (Docket No. 9), which required the Petitioner to file an amended pleading containing

more details related to the petition. Accordingly, the Court **ADOPTS** the Report and Recommendation of the Magistrate Judge (Docket No. 13) as the Order of the Court. It is hereby

ORDERED that the Petitioner's claims are **DISMISSED WITHOUT PREJUDICE**.

Additionally, the Court finds that Petitioner is not entitled to a certificate of appealability. An appeal from a judgment denying federal habeas corpus relief may not proceed unless a judge issues a certificate of appealability. *See* 28 U.S.C. § 2253; FED. R. APP. P. 22(b). The standard for granting a certificate of appealability requires the petitioner to make a substantial showing of the denial of a federal constitutional right. *See Slack v. McDaniel*, 529 U.S. 473, 483–484 (2000); *Elizalde v. Dretke*, 362 F.3d 323, 328 (5th Cir. 2004); *see also Barefoot v. Estelle*, 463 U.S. 880, 893 (1982). In making that substantial showing, the petitioner need not establish that he should prevail on the merits. Rather, he must demonstrate that the issues are subject to debate among jurists of reason, that a court could resolve the issues in a different manner, or that the questions presented are worthy of encouragement to proceed further. *See Slack*, 529 U.S. at 483-84. Any doubt regarding whether to grant a certificate of appealability is resolved in favor of the petitioner, and the severity of the penalty may be considered in making this determination. *See Miller v. Johnson*, 200 F.3d 274, 280-81 (5th Cir.), *cert. denied*, 531 U.S. 849 (2000).

Here, Petitioner has not shown that any of the issues raised by his claims are subject to debate among jurists of reason. The factual and legal questions advanced by Petitioner are not novel and have been consistently resolved adversely to his position. In addition, the questions presented are not worthy of encouragement to proceed further. Thus, Petitioner has failed to make a sufficient showing to merit the issuance of a certificate of appealability. Therefore, a certificate of appealability shall not be issued.

So ORDERED and SIGNED this 11th day of August, 2017.

Robert W Schroeder III

ROBERT W. SCHROEDER III
UNITED STATES DISTRICT JUDGE